House Bill 1027

By: Representatives Stephens of the 164<sup>th</sup>, Parrish of the 156<sup>th</sup>, Carter of the 175<sup>th</sup>, and Hatchett of the 143<sup>rd</sup>

## A BILL TO BE ENTITLED AN ACT

- 1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
- 2 taxation, so as to change certain provisions relating to the tax credit for film or video
- 3 production in Georgia; to change certain provisions relating to the exemptions from sales and
- 4 use tax for film producers and film production companies; to provide for related matters; to
- 5 provide for an effective date and applicability; to repeal conflicting laws; and for other
- 6 purposes.

## 7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

- 9 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
- amended by revising Code Section 48-7-40.26, relating to a tax credit for film or video
- 11 production in Georgia, as follows:
- 12 "48-7-40.26.
- 13 (a) This Code section shall be known and may be cited as the 'Georgia Entertainment
- 14 Industry Investment Act.'
- 15 (b) As used in this Code section, the term:
- 16 (1) 'Affiliates' means those entities that are included in the production company's
- affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other
- entities that are directly or indirectly owned 50 percent or more by members of the
- 19 affiliated group.
- 20 (2) 'Base investment' means the aggregate funds actually invested and expended by a
- 21 production company as production expenditures incurred in this state that are directly
- used in a state certified production or productions.
- 23 (3) 'Multimarket commercial distribution' means <u>paid</u> commercial distribution which
- extends to markets outside the State of Georgia.
- 25 (4) 'Production company' means a company primarily engaged in qualified production
- activities which have been approved by the Department of Economic Development. This

term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

- (5) 'Production expenditures' means preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia based travel agency or travel company; insurance costs and bonding, if purchased through a Georgia based insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include postproduction expenditures for footage shot outside of Georgia, marketing, and distribution, story rights, or development costs.
- 44 (6) 'Qualified Georgia promotion' means a qualified promotion of this state approved by 45 the Department of Economic Development consisting of <del>a</del>:
  - (A) Qualified movie production which includes an approximately a five-second long animated logo that promotes Georgia within its presentation and all promotional trailers worldwide in the end credits before the below-the-line crew crawl for the life of the project and which includes a link to Georgia on the project's web page;
  - (B) Qualified TV production which includes an imbedded five-second long Georgia promotion during each broadcast half hour worldwide for the life of the project and which includes a link to Georgia on the project's web page; or
- 53 (C) Qualified music video which includes the Georgia logo at the end of each video 54 and within online promotions; or.
  - (D) Qualified interactive game which includes a 15 second long Georgia advertisement in units sold and imbedded in online promotions.
  - (7) 'Qualified production activities' means the production of new film; or video, or digital projects produced in this state and approved by the Department of Economic Development, such as including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, series, pilots, or movies for television. Such activities shall include projects recorded in this state, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which

64 includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is 65 intended for multimarket commercial distribution via theaters, video on demand, direct 66 67 to DVD, licensing for exhibition by individual television stations, groups of stations, networks, cable television stations, or public broadcasting stations, corporations, live 68 69 venues, the Internet, or any other channel of exhibition. Such term shall not include the 70 production of television coverage of news and athletic events, local interest 71 programming, instructional videos, corporate videos, or projects not shot, recorded, or 72 originally created in Georgia.

73 (8) 'Resident' means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1, as amended.

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- (9) 'State certified production' means a production engaged in qualified production activities which have been approved by the Department of Economic Development in accordance with regulations promulgated pursuant to this Code section. <u>In the instance of a 'work for hire' in which one production company hires another production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the film tax credit.</u>
- (10) 'Total aggregate payroll' means the total sum expended by a production company on salaries paid to employees working within this state in a state certified production or productions. For purposes of this paragraph:
  - (A) With respect to a single employee, the portion of any salary which exceeds \$500,000.00 for a single production shall not be included when calculating total aggregate payroll; and
  - (B) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest shall be considered as having been paid to the employee and shall be aggregated regardless of the means of payment or distribution—

    and
- 92 (C) In the case of payments to a loan-out corporation, the loan-out corporation must
  93 register to do business in this state and must withhold taxes on its employees as
  94 provided in Article 5 of Chapter 7 of this title in order for the payments to qualify for
  95 the tax credit under this Code section.
  - (c) For any production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. The tax credit under this subsection shall be allowed if the base investment in this state equals

or exceeds \$500,000.00 for qualified production activities and shall be calculated as follows:

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the State of Georgia.

credit shall be calculated as follows:

- (1) The production company shall be allowed a tax credit equal to 20 percent of the base investment in this state; and
- 105 (2) The production company shall be allowed an additional tax credit equal to 10 percent 106 of such base investment if the qualified production activity includes a qualified Georgia 107 promotion. If the inclusion of the Georgia promotional logo is prohibited by the 108 Children's Television Act, any other local, state, or federal government policy, or cannot 109 be satisfied due to prior contractual agreements, the production company may offer 110 alternative marketing opportunities to be evaluated by the Georgia Department of 111 Economic Development to ensure that they offer equal or greater promotional value to
- 113 (d) For any production company and its affiliates that invest in a state certified production 114 approved by the Department of Economic Development and whose average annual total 115 production expenditures in this state exceeded \$30 million for 2002, 2003, and 2004, there 116 shall be allowed an income tax credit against the tax imposed under this article. For 117 purposes of this subsection, the excess base investment in this state is computed by taking 118 the current year production expenditures in a state certified production and subtracting the 119 average of the annual total production expenditures for 2002, 2003, and 2004. The tax
- (1) If the excess base investment in this state equals or exceeds \$500,000.00, the production company and its affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and
  - (2) The production company and its affiliates shall be allowed an additional tax credit equal to 10 percent of the excess base investment if the qualified production activities include a qualified Georgia promotion. If the inclusion of the Georgia promotional logo is prohibited by the Children's Television Act, any other local, state, or federal government policy, or cannot be satisfied due to prior contractual agreements, the production company may offer marketing opportunities to be evaluated by the Georgia Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.
  - (e)(1) Where the amount of such credit or credits exceeds the production company's liability for such taxes in a taxable year, the excess may be taken as a credit against such production company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such production company's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for

the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the production company.

- (2) If a production company, or a production company and its affiliates, claim the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company, or the production company and its affiliates, will only be allowed to claim the credit authorized under this Code section to the extent that the Georgia resident employees included in the credit calculation authorized under this Code section and taken by the production company, or the production company and its affiliates, on such tax return under this Code section have been permanently excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.
- (f) Any tax credits with respect to a state certified production earned by a production company and previously claimed but not used by such production company against its income tax may be transferred or sold in whole or in part by such production company to another Georgia taxpayer, subject to the following conditions:
- (1) Such production company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;
  - (2) Such production company shall submit to the Department of Economic Development and to the Department of Revenue a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such production company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Department of Economic Development or the Department of Revenue;
  - (3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the production company is in full compliance;
  - (4) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;
  - (5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company at the time of the transfer, except for the use of the credit in paragraph (1) of subsection (e) of this Code section. To the extent that such production company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the

transferee or recapture the tax credit from the transferee. The transferee's recourse is against such production company; and

- (6) The transferee must acquire the tax credits in this Code section for a minimum of 60
   percent of the amount of the tax credits so transferred.
- (g) The credit granted under this Code section shall be subject to the following conditionsand limitations:
  - (1) The credit may be taken beginning with the taxable year in which the production company has met the investment requirement. For each year in which such production company either claims or transfers the credit, the production company shall attach a schedule to the production company's Georgia income tax return which will set forth the following information, as a minimum:
- 185 (A) A description of the qualified production activities, along with the certification 186 from the Department of Economic Development;
- 187 (B) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;
- (C) The amount of tax credit claimed for the taxable year;
- 190 (D) Any tax credit previously taken by the production company against Georgia
- income tax liabilities or the production company's quarterly or monthly payments under
- 192 Code Section 48-7-103;

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- 193 (E) The amount of tax credit carried over from prior years;
- 194 (F) The amount of tax credit utilized by the production company in the current taxable 195 year; and
- 196 (G) The amount of tax credit to be carried over to subsequent tax years;
- 197 (2) In the initial year in which the production company claims the credit granted in this 198 Code section, the production company shall include in the description of the qualified 199 production activities required by subparagraph (A) of paragraph (1) of this subsection 200 information which demonstrates that the activities included in the base investment or
- excess base investment equal or exceed \$500,000.00 during such year; and
- 202 (3) In no event shall the amount of the tax credit under this Code section for a taxable 203 year exceed the production company's income tax liability. Any unused credit amount 204 shall be allowed to be carried forward for five years from the close of the taxable year in

which the investment occurred. No such credit shall be allowed the production company

- against prior years' tax liability.
- 207 (h) The Department of Economic Development shall determine through the promulgation
- of rules and regulations what projects qualify for the tax credits authorized under this Code
- section. Certification shall be submitted to the state revenue commissioner.

210 (i) The state revenue commissioner shall promulgate such rules and regulations as are necessary to implement and administer this Code section.

(j) Any production company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which may include the review of the credit provided in this Code section."

216 SECTION 2.

- Said title is further amended by revising paragraph (73) of Code Section 48-8-3, relating to exemptions from sales and use taxes, as follows:
- "(73)(A) The sale or lease of production equipment or production services for use in this
   state by a certified film producer or certified film production company for qualified
   production activities.
  - (B) As used in this paragraph, the term:
    - (i) 'Film producer' means any person engaged in the business of organizing and supervising qualified production activities.
    - (ii) 'Film production company' means any company that employs one or more film producers and whose goal is to engage in film production activity.
    - (iii) 'Production equipment' means items purchased or leased for use exclusively in qualified production activities in Georgia, including, but not limited to, cameras, camera supplies, camera accessories, lighting equipment, cables, wires, generators, motion picture film and videotape stock, cranes, booms, dollies, and teleprompters. (iv) 'Production services' means services purchased for use exclusively in qualified production activities in Georgia, including, but not limited to, digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, animation services, and script production. (v) 'Qualified production activities' means the production or post production of film or video projects such as feature films, series, pilots, movies for television, commercials, music videos, or sound recordings used in feature films, series, pilots, or movies for television, for which the film producer or film production company will be compensated and which are intended for nation-wide commercial distribution.
  - (C) Any person making a sale of production equipment or production services to a film producer or film production company as specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such seller with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the production equipment or production services without paying the tax. As a condition precedent to the issuance of the certificate, film producers and film

246	production companies shall submit an application to the commissioner for designation
247	as a certified film producer or certified film production company. Such application
248	shall not be valid without prior written approval by the Georgia Film and Videotape
249	Office of the Department of Economic Development Reserved;"
250	SECTION 3.
<ul><li>250</li><li>251</li></ul>	SECTION 3.  This Act shall become effective upon its approval by the Governor or upon its becoming law
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**SECTION 4.** 

255 All laws and parts of laws in conflict with this Act are repealed.